



October 9, 2011

The Honorable Kathleen Sebelius
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Submitted Via Electronic Mail: MLRAdjustments@hhs.gov

Louisiana adjustment request

Dear Secretary Sebelius:

We are writing on behalf of Louisiana insurance consumers to oppose the request by the Louisiana Insurance Commissioner for an adjustment to the 80% minimum medical loss ratio in the non-group market in Louisiana. The Commissioner asks CCIIO to reduce the minimum medical loss ratio to 70% for calendar year 2011 and 75% for 2012. It should be noted that adequate support was not provided for these specific proposed numerical values. The LADOI stated that for all insurers other than the larger insurer, the combined 2010 reported MLR was 67.6% and the estimated PPACA MLR was 67.7%. Those figures are difficult to reconcile. Adjustments allowed in calculating the PPACA MLR include adding in expenses, lowering premiums and making a credibility adjustment. These adjustments should make the PPACA MLR about 5% to 10% higher than the reported MLR, not the 0.1% difference given by the LADOI. Furthermore, the MLRs provided were for 2010. Insurance companies should have already taken steps to comply with higher MLRs, so that the appropriate MLR for 2011 should be higher than the historical value for 2010.

The proposed starting loss ratio of 70% for 2011 is low, especially since when the various expense, premium and credibility adjustments allowed are taken into account, a 70% PPACA MLR is comparable to an actual loss ratio in the range of 60% to 65%. Also, as discussed later, it is no longer possible for an insurance company to leave the Louisiana market in 2011 because of the required notice to policyholders. Therefore, whatever loss ratio standard is implemented for 2011 cannot impact the individual health insurance market in Louisiana for 2011. Taking this into account, even if a partial waiver of the MLR requirement is granted, which for the reasons discussed later we do not believe should be done, the minimum MLR value for 2011 should be no less than 75%.

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We are a group of organizations committed to realizing a consumer-centered health care system that provides comprehensive, affordable, quality care for everyone, especially the most vulnerable. We work to achieve this through multi-disciplinary, collaborative efforts in public policy, advocacy, education and service to consumers in Louisiana.

The medical loss ratio (MLR) gives consumers a straightforward calculation of how their premium dollars are spent and sets a minimum level of spending on medical benefits and quality improvement at 80% in the individual and small group markets. Congress, with the support of the Congressional Budget Office, concluded that an 80% minimum MLR in the non-group market was attainable by efficiently operated insurers.

Adjustments to the MLR may be granted only if “the Secretary determines that the application of such 80% may destabilize the individual market” in a state. PHSA ' 2718(b)(1)(A)(ii). HHS regulations implementing this provision of the law provide that the Secretary may adjust the MLR standard in a state only “if there is a reasonable likelihood that application of the requirement will do so.” 42 C.F.R. ' 158.301.

Louisiana has failed to make the case that its individual insurance market will be destabilized if HHS fails to grant the adjustment it requests. Louisiana’s request is largely based on the fact that three small carriers have stopped selling policies in Louisiana during 2010 and 2011. Those carriers are not even listed in the Individual Market Data for 2010 provided by LADOI. The more than thirty insurance companies remaining can easily accommodate, without any disruption or destabilization to the market, the new business that would have been written by these three companies. Of the three carriers that have given notice of withdrawal in 2010 and 2011, only one attributed its withdrawal generally to Affordable Care Act requirements (but not necessarily the 80% MLR standard), another stated that withdrawal was completely unrelated to health care reform and the other company was withdrawing from the small and large group market, not the individual market. In addition, according to the documents supplied by the LADOI, none of these insurance companies would need to pay a rebate under the 80% MLR requirement, and hence the numerical value of the MLR could not reasonably have been a factor in their decisions. Indeed, there is no indication that these issuers do not continue to do business in other states where they are subject to the same MLR requirements. No evidence is offered by the Commissioner that any other issuers have given notice that they are planning to exit the Louisiana market. Neither is any evidence offered as to the normal turnover in the individual insurance market in Louisiana. It is not uncommon for small insurers to stop writing blocks of business or to even exit a market for all kinds of reasons, and the fact that several insurers have stopped writing policies in a particular year is not necessarily an unusual event. Of course, minimum medical loss ratios are being implemented nationwide, and unless an insurer intends to stop writing policies in the individual market nationwide, there is no particular reason why an issuer would leave Louisiana alone.

It appears from data submitted by the Commissioner that only two of the issuers in the Louisiana individual market who reported data did not have sufficient underwriting gain in the individual market to cover the rebates they would owe with an 80% minimum MLR. No explanation is offered as to why those insurance companies with MLRs that fall below 80% cannot achieve the 80% medical loss ratio.

The Commissioner also claims, without support, that immediate imposition of an 80% MLR requirement will deprive consumers of needed access to agents and brokers. No evidence is offered that consumers will lose access to brokers or agents if the 80% requirement remains in place. Data from the Insurance Information Institute indicates that employment for insurance agents & brokers has been steady during the

last year. In fact, according to this data employment of Insurance Agents & Brokers increased by 5,500 (+0.9%) between July 2010 and July 2011.

If the section 2718 MLR 80% rule is allowed to go into effect in Louisiana, the Department estimates that rebates of \$10,983,000 million would be paid to Louisiana insurance consumers during 2011 and \$13,206,000 in 2012. If the Department's request is granted, these rebates fall to \$2,216,000 in 2011 and \$5,272,000 in 2012. This is \$16.7 million that would be transferred from Louisiana individuals and small businesses to insurance companies, at a time when insurance premiums are steadily rising and consumers' income is not.

HHS regulations set out information that states must submit and criteria that HHS must apply in determining whether or not to grant a state an adjustment. 42 C.F.R. " 158.321, 158.330. The criteria HHS must consider includes:

- (a) The number of issuers reasonably likely to exit the State or to cease offering coverage in the State absent an adjustment to the 80 percent MLR and the resulting impact on competition in the State.
- (b) The number of individual market enrollees covered by issuers that are reasonably likely to exit the State absent an adjustment to the 80 percent MLR.
- (c) Whether absent an adjustment to the 80 percent MLR standard consumers may be unable to access agents and brokers.
- (d) The alternate coverage options within the State available to individual market enrollees in the event an issuer exits the market,
- (e) The impact on premiums charged, and on benefits and cost-sharing provided, to consumers by issuers remaining in the market in the event one or more issuers were to withdraw from the market.
- (f) Any other relevant information.

The Louisiana adjustment request cannot be justified under any of these criteria.

Louisiana has offered no evidence that any insurers have exited the state or will exit the state or cease offering coverage absent an adjustment.

Louisiana offers no evidence that any insurers will leave the market if an MLR adjustment is not granted. Under federal law, an insurer must give 180 days notice before leaving the nongroup market. No insurer has apparently given notice of withdrawal beyond those that have already left, and none could give notice and exit for 2011. Furthermore, if a company withdraws from the market it may not reenter the market for five years. This restriction makes it unlikely that any health insurance company with a significant enrollment would withdraw from Louisiana in 2012 or 2013 given the greatly expanded, and federally subsidized, individual market that will be available through the exchange beginning in 2014.

Louisiana has offered no evidence that any enrollees are covered by insurers that will exit the state absent an adjustment.

Because Louisiana has offered no evidence that any insurer will leave the state absent an adjustment, it has also failed to prove that any enrollee will lose coverage because of insurers exiting the state.

Louisiana has not demonstrated that access to agents and brokers will be disrupted if an adjustment is not granted.

The adjustment request expresses a concern that requiring companies to meet the statutory MLR requirement will result in reduced commissions and subsequently in loss of agents and brokers. It has offered no evidence to support this claim.

The federal rule, moreover, does not guarantee that broker and agent's compensation will never be reduced, but rather than consumers must have adequate access to brokers and agents. No evidence is provided that implementation of an 80 percent MLR will reduce access. Moreover, granting an adjustment would not guarantee that broker and agent compensation would be increased. Indeed, there is no reason to believe that insurers would not simply retain increased income as profit rather than passing it on to agents and brokers.

Alternative coverage is available to Louisiana insurance consumers if an insurer exits the state.

If an insurer does withdraw from Louisiana, it is likely that an individual who was covered by that insurer will be able to get coverage through one of the remaining insurers. Moreover, the Louisiana Health Plan high risk pool is available to individuals and families who are unable to otherwise get coverage due to preexisting conditions.

The loss to Louisiana consumers of granting this adjustment request would be substantial.

As already noted, Louisiana consumers will lose \$16.7 million in rebates for 2011 and 2012 if this request is granted. They will also lose any effect that the rebate requirement would have on driving down premiums for the next three years. There is no evidence that premiums or cost-sharing would increase or benefits be reduced if the adjustment is not granted.

Louisiana has failed to establish that this adjustment request is necessary. Granting it would cause harm to Louisiana consumers. We request that this adjustment proposal be denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Moriba A. Karamoko".

Moriba A. Karamoko, Director
Louisiana Consumer Healthcare Coalition